

Section 504 of the Rehabilitation Act of 1973

A Guide For Local Education Agencies



TENNESSEE DEPARTMENT OF EDUCATION

Division of Special Education

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Introduction

Section 504 is a civil rights statute which provides: “No otherwise qualified individual with handicaps in the United States...shall, solely by reason of his/her handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.” *29 USC § 794*

The purpose of this document is to guide local education agencies so that they may be aware of their obligations under Section 504 of the Rehabilitation Act of 1973. Local education agencies may contact the Division of Special Education’s Office of Legal Services at (615) 741-0660 for technical assistance.

This document serves only to guide local education agencies and is not a policy of the Tennessee Department of Education. However, Section 504 is not optional, and adherence to the Act is mandated by the U.S. Department of Education for receipt of federal funds.

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Frequently Used Terms

Educational Need A substantial limitation on learning demonstrated by a serious academic deficit and/or serious behavior problems resulting from the student's disability and not from other causes.

Educational Placement A program and/or service setting with children who are not disabled, to the maximum extent appropriate to the needs of the child.

Eligibility A student is eligible under §504 if the student: (a) has a physical or mental impairment which substantially limits one or more major life activities; (b) has a record of such an impairment; or (c) is regarded as having such an impairment.

Free Appropriate Public Education (FAPE) A student who is eligible under §504 and has an educational need is entitled to FAPE. A LEA shall provide FAPE to each qualified disabled person who is in its jurisdiction. The LEA shall provide regular or specially designed instruction and related aids or services designed to meet the individual's educational needs. FAPE must be provided without cost, except for fees that are also paid by nondisabled students.

Major Life Activity Functions such as walking, seeing, hearing, speaking, breathing, learning, working, caring for oneself, and performing manual tasks. The disability only needs to substantially limit one major life activity in order for the student to be eligible.

Manifestation Determination Meeting of the 504 review committee to determine whether the student's behavior is caused by, or has a direct and substantial relationship to, his/her disability when a student is removed from classes to such an extent that it constitutes a significant change of placement.

Parent A biological or adoptive parent or guardian, surrogate parent, someone acting in place of a parent (including a grandparent, stepparent, or other relative) with whom the child lives, or someone who is legally responsible for the child.

Physical or Mental Impairment (a) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or (b) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness and specific learning disabilities. A physical or mental impairment does not constitute a handicap unless its severity is such that it results in a substantial limitation of one or more major life activities.

Procedural Safeguards A system of activities established and implemented by the LEA that provides the parent or guardian with notice, an opportunity to examine relevant records, an

impartial hearing with parental participation and representation by counsel, and a review procedure when there is a disagreement between the parents and the LEA regarding the identification, evaluation or educational placement of a student eligible under §504.

Section 504 Coordinator A responsible employee of a recipient of federal funds that employs fifteen (15) or more persons who shall coordinate the efforts to comply with the section 504 regulations.

Section 504 Review Committee A group of persons knowledgeable about the student, knowledgeable about the meaning of the evaluation data, the placement options, the legal requirements to place a disabled child in the least restrictive environment, and the legal obligation to provide comparable facilities to disabled students. The committee shall include the 504 coordinator or designee, parents, and professionals knowledgeable about the student.

Significant Change in Placement A substantial and fundamental change in a student's educational program. Whether a change in facilities is a significant change in placement must be determined on a case by case basis. For example, if a student is receiving the same services and programming in substantially the same environment, there has not been a significant change in placement. However, OCR considers regular education transfers made due to age considerations, including graduation, to be a significant change in placement.

Stay Put If the LEA proposes to change the student's placement and the parent files a request for a hearing, the LEA is obligated to maintain the student's placement until administrative proceedings are completed.

Student Services Plan A written document developed by a student's 504 review committee which states the nature of the concern, the specific modifications, and the related support services to be provided to a child who is eligible under Section 504.

Substantially Limits Means: (1) the inability to perform a major life activity that the average person in the general population can perform;" or (2) Substantial limitation as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration which the average person in the general population can perform that same major life activity. This definition is not comprehensive and reflects the fact that a definition is not included in the regulations. The Office of Civil Rights (OCR) has declined to formally interpret the term in nonregulatory guidance. OCR has stated that the term has been interpreted to require an important and material limitation. Decisions should be made by the 504 review committee on a case by case basis.

Local Education Agency Responsibilities

1. Compliance Requirements

To be in compliance with Section 504, LEAs must do the following:

1. Provide written assurance of non-discrimination whenever the LEA receives federal funds. *34 CFR 104.5(a)*
2. Designate an employee to coordinate its efforts to comply with Section 504. (Applies to recipients of federal funds with 15 or more employees.) *34 CFR 104.7(a)*.
3. Adopt grievance procedures to resolve complaints alleging any action prohibited by federal regulations. (Applies to recipients of federal funds with 15 or more employees). This does not apply to applicants for employment. *34 CFR 104.7(b)* Note: Students, parents or employees are entitled to file grievances. A grievance procedure like that afforded to parents under the Family Education Rights and Privacy Act (FERPA) for resolving disputes about student records would suffice.
4. Provide notice to students, parents, employees, unions, and professional organizations of nondiscrimination in admission or access to, or treatment or employment in, its programs or activities (if 15 or more employees). Notice must also specify the responsible employee. Notice must be included in student/parent handbook. *34 CFR 104.8*
5. Annually identify and locate all Section 504 qualified children in the LEA's geographic area who are not receiving a public education. *34 CFR 104.32(a)*.
6. Annually notify persons who are disabled and their parents of the district's responsibilities under Section 504. *34 CFR 104.32(b)*.
7. Provide parents with procedural safeguards including the right to a due process hearing. Each LEA must develop a process to ensure impartial due process hearings. The employment of a 504 hearing officer is the financial responsibility of the LEA. *34 CFR 104.36*

2. Student Referrals

Parents, teachers, diagnosticians, and building administrators may refer for an evaluation a student who is suspected of having a Section 504 disabling condition that substantially limits the learning process. The person may obtain a written referral form from the 504 designee who will assist both the parent and the staff in collecting appropriate student data as well as

providing parents with appropriate notification. The 504 coordinator will present these written requests to the Section 504 review committee for determination of educational need.

3. Free Appropriate Public Education (FAPE)

Districts must provide FAPE (regular or special education and related aids and services) to Section 504 school-age children in the LEA's jurisdiction. Instruction must be individually designed to meet the needs of the student as adequately as the needs of non-disabled students. Section 504 does not require LEAs to develop an IEP. It is recommended that the LEA document that the Section 504 review committee convened and specify the agreed upon services in a document called a Student Services Plan. The quality of educational services provided to students with disabilities under Section 504 must be equivalent to the services provided to non-disabled students. Teachers must be trained in the instruction of persons with the disability in question and appropriate materials and equipment must be available. *34 CFR 104.33(b)*

Transportation If a LEA places a student in a program not operated by the LEA, the LEA must insure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the parent if the student were placed in the program operated by the LEA. *34 CFR 104.33(c)(2)* If a LEA provides transportation to all its students within a certain geographic area, it may not discriminate in its provision of transportation to students with a disability. The length of the bus rides for students with disabilities should not be longer than that of non-disabled students. If a LEA proposes to terminate a qualified student's bus transportation for inappropriate bus behavior, the LEA must hold a manifestation determination and provide the parents with notice of their rights.

Residential Placement The placement must be provided by the LEA at no cost to the parent if necessary to provide FAPE. This includes non-medical care and room and board. *34 CFR 104.33(c)(3)*.

Parental Placements If the LEA offers FAPE to a student but the parent chooses to place the child elsewhere, the LEA is not responsible to pay for the placement. *34 CFR 104.33(c)(4)* Disagreements regarding program availability and financial responsibility are subject to due process procedures.

4. Evaluations

An evaluation is usually triggered by a request from a parent or a referral from the classroom teacher. A LEA is required to evaluate the student only when it has reason to believe the child needs special education and related services. However, it is best practice to evaluate the student unless there is no reason to suspect the student might be eligible under §504. If a student needs or is believed to need special education or related services, the LEA must evaluate the student prior to initial placement in a regular or special education program and before any significant change in placement. *34 CFR 104.35(a)* A full evaluation is not required

when neither the LEA nor the parents believe that the child is in need of special education or related services. However, the LEA should have current medical information in order to make needed modifications to the student's educational program.

The LEA must establish policies and procedures for evaluation and placement which assure that tests and other evaluation materials: have been validated for the specific purpose for which they are used and are administered by trained personnel; are tailored to assess educational need and are not merely based on IQ scores; and reflect aptitude, achievement or whatever else the tests purport to measure and do not reflect the student's impaired sensory, manual or speaking skills (unless the test is designed to measure these particular deficits). *34 CFR 104.35(b)* There is no entitlement to an independent evaluation under Section 504.

Before a student can receive services, the parents must be notified and the student must be evaluated using validated tests and trained personnel. Both parental consent and prior notice are required before a student is initially evaluated and/or placed. LEAs are not required to obtain parental consent for subsequent student evaluations. The LEA should have procedures to override a parent's refusal to consent for an initial evaluation via a due process hearing. The evaluation/screening and placement process is determined by the type of suspected disability and the type of services the student may need. The evaluation must be sufficient to accurately and completely assess the nature and extent of the disability in order to recommend appropriate services. *34 CFR 104.35(b)* Utilization of the state regulations and evaluation standards for IDEA is an acceptable means of meeting the evaluation requirements of Section 504. Parents are entitled to a copy of the 504 Student Services Plan. If parents do not attend the meeting, a copy should be mailed to them.

5. Placement

In interpreting evaluation data and making placement decisions, the 504 review committee must:

Draw upon information from a variety of sources;

Ensure that all information is documented and considered;

Ensure that the placement decision is made by a group of persons including those who are knowledgeable about the child, the meaning of the evaluation data and placement options; and

Ensure that the student is educated with non-disabled peers to the maximum extent appropriate. To the maximum extent appropriate, the LEA must educate students who are disabled with non-disabled students in the least restrictive environment. In order to remove a child from the regular educational environment, the LEA must demonstrate that education of the student in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. *34 CFR § 104.34; 34 CFR 104.35(c)*

6. 504 Review Committee

The 504 review committee has the responsibility of determining eligibility and appropriate modifications, related aids or services for the student, and will be composed of the 504 coordinator, principal, parents and professionals knowledgeable about the student. Other persons may be invited to attend the committee meeting by the parents and/or the LEA. The group should review the nature of the disability, how it affects the student's education, whether special services are needed, and if so what those services are. The decisions about Section 504 eligibility and services must be documented in the student's file and reviewed periodically. The 504 review committee meeting may proceed when the parents are not present, but every effort should be made and documented by the 504 coordinator to have them attend the meeting, such as calling them or rescheduling the meeting. The function of the 504 review committee will be to consider the student's eligibility, initial placement program, services needed, conduct program reviews, and annually review the student's 504 program.

7. Student Services Plan

The Student Services Plan developed by the 504 review committee is based upon the child's educational need(s) and least restrictive environment considerations. The 504 review committee's student services plan will document the proceedings of the committee. The report will include the date, student information reviewed, the findings of the committee, modifications, and the signature and recommendations of the members present at the meeting. A copy of the student's services plan will be made available to the appropriate school personnel when it contains supplemental/supportive service provisions to be implemented at school. The 504 review committee's student services plan will be filed and maintained in the student's education records.

8. Reevaluations

Section 504 requires *periodic* reevaluations. There is no specified time limit. However, LEAs will be in compliance if they reevaluate the student every three years. Additionally, Section 504 requires a reevaluation before any significant change in placement. *34 CFR 104.35(d)*. Reevaluation can consist of a comprehensive evaluation or a review of the student data and student service plan. Examples of significant changes in placement which require reevaluation include: expulsion; series of suspensions which exceed 10 days (consideration must be given to the frequency of suspensions, the length of each and their proximity to one another.); transferring a student to home instruction; graduation from high school; and, significantly changing the composition of the student's class (e.g., moving the student from regular education to the resource room.)

9. Assessment of Academic Skills

All students must complete the curriculum established by the State Board of Education in order to graduate from high school. Test administration procedures that do not cause test results to be invalid may be used. The decision to use a particular modification with a student should be made on an individual basis and should take into consideration the needs of the student and whether the student routinely receives the modification in classroom instruction. The student's 504 review committee shall make the decision regarding testing modifications and document them in the Student Services Plan.

10. Discipline

A student in a 504 program is subject to the school's student code of conduct. The Student Services Plan may include a behavior management plan which outlines disciplinary options to be used.

Removal from Classes In some cases, inappropriate behavior may cause the student to be removed from classes and/or school for a few days or to be sent to an alternative education program, such as a supervised setting separate from regular classes or in-school suspension. In either case, the student will be given the opportunity to complete assignments and earn course credit. The 504 review committee will conduct a manifestation determination when a student with a disability is suspended from school for more than ten (10) consecutive school days or when a series of suspensions create a pattern of exclusions that constitute a significant change in placement. The determination will be based on current information. The evaluation data considered in a manifestation determination meeting must be recent enough to afford an understanding of the student's current behavior. The determination of whether a series of suspensions is a significant change of placement will be made on a case-by-case basis by the 504 review committee. The factors that will be considered will be the length of each suspension, the proximity of the suspension to one another, and the total amount of time the disabled student is suspended from school. When it is determined that the disabled student's misconduct is caused by his/her disabling condition, the student may not be suspended or expelled from school. The 504 review committee will then determine whether the student's current educational placement or accommodation plan is appropriate. OCR interprets §504 as requiring LEAs to develop an individualized behavior management plan for a student with a disability when the student's behavior significantly interferes with his ability to benefit from his education. The purpose of the plan is to maintain the student's placement in the least restrictive environment to meet his educational needs. Removal for more than 10 days requires the same guidelines as for special education students. The student is entitled to the due process protections of 34 CFR §104.36.

Expulsion If a student violates the LEA's code of conduct, s/he may be expelled from school. Before an expulsion or other exclusion that constitutes a significant

change in placement, the 504 review committee must conduct a manifestation determination. Such a determination should be based on current information. If it is determined by the 504 review committee that the misconduct is caused by the student's disabling condition, the student may not be expelled. The 504 review committee must then determine whether the student's current educational placement is appropriate. If it is determined by the 504 review committee that the misconduct is not caused by the student's disabling condition, the student may be disciplined in the same manner as a non-disabled student, including expulsion from school.

11. Non-Academic Services

LEAs must provide equal opportunity in areas such as counseling, physical education, recreation, athletics, transportation, health services, recreational activities, special interest groups or clubs, referrals to other agencies and employment. *34 CFR § 104.37*. Section 504 regulations give students with disabilities an equal opportunity to participate in extracurricular services and extend the least restrictive environment mandate to extracurricular activities.

Counseling Services LEAs must provide counseling services without discrimination on the basis of disability. LEAs may not counsel students with a disability toward more restrictive career objectives. *34 CFR § 104.37(b)*

Physical Education and Athletics LEAs must provide an equal opportunity for students with disabilities to participate. LEAs may offer these activities separately for students who are disabled only if necessary, and the district may not deny a disabled student the opportunity to compete in activities which are not separate. *34 CFR § 104.37(c)*

12. Inspection & Review of Education Records

Parents may inspect and review education records collected, maintained or used for purposes of referring, evaluating, placing or educating the student in the Section 504 program by contacting the 504 coordinator. Upon reviewing the parents' request, the 504 coordinator will allow them to inspect the records or copies of the records must be made available to them within forty-five (45) calendar days or at other mutually convenient times by prior arrangement. *FERPA 29 USC 1232(g)*

13. Grievance Procedures

The LEA must adopt a grievance procedure for a student, parent or employee to file a grievance concerning alleged violation of Section 504. OCR has opined that a compliant grievance procedure will include reasonable time frames, an opportunity to present evidence, notification of findings and an appeals process.

14. Due Process Hearings

Parents who wish to challenge a decision of the Section 504 committee shall file a written Notice of Appeal with the Section 504 coordinator. Upon receipt of a Parent's Appeal, the LEA will schedule a due process hearing before an impartial hearing officer and provide the parents with a written Notice of Hearing that sets out the date, time, and place for the hearing and advises them of their right to participate and be represented by an attorney. The employment of a hearing officer is the financial responsibility of the LEA.

Frequently Asked Questions - Generally

What is a "program or activity"?

The term includes all levels of the Tennessee Department of Education and all LEAs or schools receiving federal funds regardless of whether the specific program or activity involved is a direct recipient of federal funds. For example, if a district contracts with alternative education programs, the district must insure that a student with disabilities has an equal opportunity to participate in alternative education, even though the programs themselves do not receive any federal funds. *34 CFR 104.3(k)*

Who is a "qualified" individual with a disability?

For elementary and secondary education programs, Section 504 regulations define a qualified individual with a disability as one who is: a) of an age during which non-disabled individuals are provided with educational services; b) of any age during which it is mandatory under State law to provide such services to disabled individuals; or c) entitled to FAPE under IDEA. *34 CFR §104.3(l)*

Who is eligible under Section 504?

There are three ways a person is eligible under Section 504:

1. Has a physical or mental impairment, which substantially limits one or more major life activities (e.g., drug addicted or alcoholic students; students with diabetes). The definition in the regulations does not set forth a list of specific diseases and conditions that constitute physical or mental impairments because of the difficulty of ensuring the comprehensiveness of any such list. The term does not include persons disadvantaged by cultural, environmental or economic factors, prison records, age or homosexuality.
2. Has a record or history of such an impairment (e.g., a student who had cancer; a student in recovery). The term also includes children who have been misclassified (e.g., a non-English speaking student who was mistakenly classified as having mental retardation).
3. Is regarded as having such an impairment. A person is considered eligible if he/she:
 - a. has a physical or mental impairment that does not substantially limit a major life activity but is treated by the LEA as having such a limitation (e.g., a student who has scarring, a student who walks with a limp);
 - b. has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such impairment; or

- c. has no physical or mental impairment but is treated by the district as having such an impairment (e.g., a student who tests positive with the HIV virus but has no physical effects from it). *34 CFR 104.3(j)*

The above cited examples are not exhaustive.

Unlike IDEA, a student with a physical or mental impairment may be covered under §504 even if s/he requires no accommodation or services. The purpose of including these students is to protect them from being injured by prejudice or stereotypical attitudes of others. Also, there is nothing in either the statute or regulations that expressly states that a disability must be permanent for §504 protections. The determination of the Section 504 review committee to extend services to a student with a temporary disability must be made on a case by case basis. The 504 review committee should take into consideration how long and how severely the temporary impairment limits a major life activity for a particular student.

What is the difference between Section 504 and IDEA eligibility?

The Individuals with Disabilities Education Act (IDEA) specifically lists the disabling conditions which entitle a child to receive special education and related services. Additionally, in order to receive services under IDEA, the disabling condition must result in a need for special education and related services. Section 504 is much broader. There is no list of disabling conditions. The regulations also make clear that certain conditions, such as drug or alcohol addiction, and heart disease, which would not qualify a child under IDEA, may be disabling conditions under Section 504.

May a LEA use IDEA funds to serve child eligible under Section 504 but not IDEA?

No. However, the LEA may use IDEA funds to evaluate the child if the LEA thinks the child may be eligible for special education and related services as defined by IDEA.

Does Section 504 have a Child Find requirement?

Yes. Section 504 requires the LEA to conduct an annual effort to identify and locate every qualified student residing in the LEA's jurisdiction and take any necessary steps to notify those students and their parents of the LEA's duty under §504. If the LEA chooses, it may undertake screenings to meet this requirement.

How is discrimination defined in Section 504?

Discrimination under Section 504 occurs when a recipient of federal funds:

1. Denies, on the basis of a disability, a qualified person the opportunity to participate in or benefit from an aid, benefit or service (e.g., LEA refusing to allow any student with an IEP the opportunity to be on the honor roll; denial of credit to a student whose absenteeism is related to his/her disabling condition; expelling a student for behavior related to his/her disability; refusing to dispense medication to a student who could not attend school otherwise.)
2. Denies the Section 504 qualified person an opportunity to participate in or benefit from the aid, benefit, or service that is *equal* to that afforded others.
3. Fails to provide aids, benefits, or services to a person qualified under Section 504 that are as *effective* as those provided to non-disabled persons (e.g., providing him/her with an interpreter instead of placing a student with a hearing impairment in the front row).
Note: “Equally effective” means *equivalent* as opposed to *identical*. Moreover, to be *equally effective*, an aid, benefit or service need not produce equal results; it must merely afford an equal opportunity to achieve equal results.
4. Provides different or separate aids, benefits or services to disabled persons or any class of disabled persons unless such action is necessary to provide aid, benefits or services that are as effective those provided to others.
5. Aids or perpetuates discrimination against the disabled by providing significant assistance to an agency, organization or person that discriminates on the basis of a disability in providing any aid, benefit, or service to beneficiaries of the program (e.g., sponsoring a student organization that excludes persons with disabilities).
6. Denies a person with a disability the opportunity to participate as a member of a planning or advisory board strictly because of their disability.
7. Otherwise limits the enjoyment of any right, privilege, advantage or opportunity enjoyed by others.
8. In determining the site or location of a facility, makes selections which effectively excludes persons with disabilities, denies them the benefits of, or otherwise subjects them to discrimination.

Who enforces Section 504?

The Office for Civil Rights (OCR) enforces four federal statutes that prohibit discrimination in programs and activities receiving federal financial assistance from the U.S. Department of Education. Discrimination on the basis of race, color, and national origin is prohibited by Title VI of the Civil Rights Act of 1964; sex discrimination is prohibited by Title IX of the Education Amendments of 1972; discrimination on the basis of disability is prohibited by Section 504 of the Rehabilitation Act of 1973; Title II of the American with Disabilities Act of 1990; and age discrimination is prohibited by the Age Discrimination Act of 1975. OCR also assists other departmental offices in ensuring that federal assistance administered by those

offices is consistent with federal civil rights laws. OCR has authority to enforce these laws in all programs and activities that receive federal funds. These include programs and activities operated by institutions and agencies, such as state education agencies, elementary and secondary schools, colleges and universities, vocational schools, vocational rehabilitation agencies, libraries, museums and some prisons that receive federal funds or other recipients. OCR investigates complaints filed by individuals, or their representatives, who think that they have been discriminated against because of race, color, national origin, sex, handicap, or age. It also initiates compliance reviews of recipient institutions and agencies, and monitors the progress in eliminating discriminatory practices of institutions and agencies that are implementing plans negotiated by OCR. OCR attempts to resolve compliance problems through negotiation. However, if unable to do so, OCR initiates the actions necessary to enforce the law. Parents who allege that the LEA has violated a provision of Section 504 may file a complaint with the OCR.

The address of the regional office which covers Tennessee is:
United States Department of Education
Office for Civil Rights
Atlanta Office, Southern Division
61 Forsyth St., S.W.
Suite 19T70
Atlanta, GA 30303
(404) 562-6350

Frequently Asked Questions - Drugs or Alcohol

If the LEA suspects that a student has an alcohol or drug problem, what should it do?

If a LEA suspects that the drug or alcohol problem may be substantially limiting a major life activity, such as learning, the LEA is obligated to evaluate the child at the LEA's expense. If the evaluation verifies the existence of a disabling condition, which substantially limits a major life activity, the student is considered disabled under Section 504. The LEA must then convene a 504 review committee meeting. The committee will design an educational program to meet the student's individual needs and give notice to the student's parents of their rights under Section 504. The LEA must periodically reevaluate the student and may not make a significant change in the student's placement without providing the parent with notice and conducting a reevaluation.

NOTE: Section 504 does not require LEAs to provide treatment for substance abuse.

What if the student is caught using drugs at school?

A LEA is entitled to enforce its rules prohibiting the use, sale or possession of drugs or alcohol by drug- or alcohol-addicted students, provided that the rules are enforced evenly with respect to all students. Although using drugs at school is related to drug addicted student's disability, the LEA may still use its normal disciplinary policies, including expulsion, provided that the LEA follows proper procedures. This is a notable exception to the general prohibition against expelling a student for behavior related his/her disability under Section 504 and the IDEA.

Are there any special considerations for children who have AIDS or HIV Infection?

Students with Acquired Immune Deficiency Syndrome (AIDS), AIDS-Related Complex (ARC) or otherwise infected with Human Immunodeficiency Virus (HIVinfected) are individuals with disabilities under Section 504. They either qualify as actually having a physical impairment, which substantially limits a major life activity, or are regarded as having such a disability. Placement decisions must be made by the 504 review committee.

Frequently Asked Questions - Accessibility

What is the LEA's responsibility to make buildings accessible?

Facilities which are defined by Section 504 as “existing facilities” need not necessarily be made accessible so long as the program or activity, viewed in its entirety, is readily accessible to persons with disabilities. *34 CFR § 104.22* It would not be necessary to make every school in a LEA accessible. However, the student must be afforded an equal opportunity to enjoy the full range of services offered by the LEA.

What modifications can the LEA make to facilities?

A LEA can redesign equipment, reassign classes or other services to accessible buildings, assign aides to students, deliver services at alternate accessible sites, or alter existing facilities. A LEA need not undertake structural changes to a building if other methods will result in compliance. *34 CFR § 104.22(b)*

What are some examples of unacceptable accommodations?

Carrying a student up stairs; in a LEA, making one particular building or part of a building accessible and placing all students with mobility impairments at this location; having students who are disabled eat on a separate floor due to an inaccessible cafeteria; denying certain programs such as music, art or assembly because these programs are inaccessible.

What are the LEA's obligations for new buildings or additions?

Buildings or additions constructed since June 3, 1977 must be designed and constructed to allow disabled persons the ability to access and use them readily. *34 CFR § 104.23(a)* For example, multilevel buildings should have ramps or elevators, accessible bathrooms, doorways constructed wide enough to fit wheelchairs, etc.

What is the LEA's obligation when a building is altered?

To the maximum extent feasible, all facilities which are altered after June 3, 1977, must be altered to allow accessibility and usability by persons with disabilities. *34 CFR § 104.23(b)* For example, if a school district adds on a wing to a building, the wing must be made accessible.

What does “to the maximum extent feasible” mean?

This provision covers the occasional instance where the nature of an existing facility is such that it is impractical or prohibitively expensive to renovate it in a manner that results in its being entirely barrier-free. However, in all of these instances, the alteration should provide the maximum amount of physical accessibility that is feasible. *34 CFR § 104.23(b)*.

Who provides technical assistance for accessibility issues?

OCR can provide technical assistance to LEAs on fulfilling the accessibility requirements of Section 504.

Frequently Asked Questions - Employment Practices

The primary purpose of this manual is to address issues regarding student rights under Section 504. However, since Section 504 also encompasses employment practices, this manual includes this section on employment practices. For further information on requirements of LEAs and their employees, please consult the Personnel Office of the LEA, and/or Chapter 34 of the Code of Federal Regulations, Part 104, Subpart B.

Who is a “qualified” individual with a disability for employment purposes?

A qualified individual with disabilities is one, who with reasonable accommodations can perform the essential functions of the job in question. *34 CFR § 104.3(1)(1)*

What are the LEA’s responsibilities for hiring persons with disabilities?

LEAs, because they receive federal financial assistance under the IDEA and other federal statutes, are required to take positive steps to employ and advance qualified individuals with disabilities. LEAs must make reasonable accommodations to the known physical or mental limitation of an otherwise qualified applicant or employee who has a disability unless the accommodation would impose an undue hardship on the operation of the LEA’s program. *34 CFR § 104.12(a)*

What is considered an undue hardship?

The regulations list the following factors which should be considered:

1. The overall size of the LEA’s program with respect to the number of employees, number and type of facilities, and size of budget.
2. The type of operation, including the composition and structure of its workforce.
3. The nature and cost of the accommodation needed. *34 CFR § 104.12(c)*

What are reasonable accommodations?

Some examples of reasonable accommodations are:

1. Making facilities readily accessible to and usable by persons with disabilities.

2. Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters. *34 CFR § 104.12(b)*.

When may a LEA refuse to hire an applicant or promote an employee who has a disability?

The LEA does not need to hire an applicant when the person is not qualified, where reasonable accommodation does not overcome the effects of the person's disability, or where reasonable accommodation causes undue hardship to the employer. *34 CFR § 104.12*

Is the LEA prohibited from asking an applicant about any disabilities s/he may have?

Generally, an employer covered by Section 504 may not conduct a pre-employment medical examination or make pre-employment inquiries as to whether an applicant has a disability. However, the employer may inquire into an applicant's ability to perform job-related functions. For example, an employer may not ask an applicant if s/he has epilepsy but may ask whether s/he can perform a particular job without endangering other employees. *34 CFR 104.14*.

Are medical examinations prohibited?

An employer may condition employment on the results of a medical examination only if all applicants, regardless of disability, are also subject to such an examination and the results are kept confidential. *34 CFR § 104.14*

What limitations are on an employer regarding testing applicants?

A test which tends to screen out persons with disabilities may not be used unless the test score is shown to be job related and alternative job related tests which do not screen out persons with disabilities are not available. Tests must also be administered in a manner that reflects actual aptitude or skill rather than the sensory, manual or speaking impairment of the applicant unless the tests purport to test these skills. *34 CFR § 104.13*.

Is an employer allowed to provide different fringe benefits or contributions for persons with disabilities if justified on an actuarial basis?

No. Such a suggestion was rejected by the U.S. Department of Education when the regulations were adopted. *34 CFR §104.11*

What is an employer's obligation to hire or retain a person who is addicted to alcohol or drugs?

An employer subject to Section 504 may not refuse employment to someone who has been addicted to drugs or alcohol in the past. If an applicant or employee is presently addicted to alcohol, the employer may not refuse or terminate employment unless the employer can show that the alcohol addiction prevents successful performance on the job or presents a direct threat to property or the safety of others. The employer may hold the addicted person to the same standards of performance and behavior as expected of others. The behavioral manifestations of the condition may be taken into account in determining whether s/he is qualified. An employer is not required to retain or hire an individual addicted to drugs who is currently using drugs.

Is an employer entitled to administer drug testing to persons known to have been addicted in the past?

An employer is not prohibited from requiring an employee to be drug tested who has successfully completed or is presently participating in a supervised drug rehabilitation program.

Major Differences in IDEA & Section 504

| | IDEA | Section 504 |
|---|--|---|
| Eligibility | Lists categories of disabilities. | A person who has or has had a physical or mental impairment that substantially limits a major life activity or is regarded as disabled by others. |
| FAPE | "Appropriate" means a program designed to provide an educational benefit. | "Appropriate" means an education comparable to the education provided to nondisabled students. |
| Special Education vs. General Curriculum | A student is only eligible to receive IDEA services if the IEP team determines that the student has one of the disabling conditions and needs special education and related services. | A student is eligible if s/he has or has had a physical or mental impairment, which substantially limits a major life activity or is regarded as disabled by others. The student is not required to need special education. |
| Funding | The LEA receives additional funds for eligible children. | Additional funds are not provided. |
| Accessibility | Not specifically mentioned although if modifications must be made to provide FAPE, IDEA requires it. Does not extend least restrictive environment to nonacademic services. | Detailed regulations regarding building and program accessibility and comparable facilities. Includes academic settings. |
| Procedural Safeguards | Requires written notice regarding identification, evaluation, and placement. Notice requirements are specifically spelled out. Prior written notice required before any change in placement. | Written notice not required although it is recommended. Notice required before a significant change in placement. |
| Evaluations | Consent required prior to an initial evaluation. Reevaluations must be conducted at least every 3 years. Not required before a change in placement. | Notice not consent required. Periodic Reevaluations required. Reevaluation required before a significant change in placement. |
| Due Process Hearings | Requires impartial hearing. Rules are almost identical. | Requires impartial hearing. Rules are almost identical. |
| Exhaustion | Must pursue administrative hearing before seeking redress in court. | Not required. |
| Enforcement | Compliance monitored TDOE. Department will resolve complaints. | Enforced by OCR. OCR will investigate complaints. |
| Transition Services | IDEA requires the development of a transition plan within the IEP process beginning at age 14. | No requirement. |
| IEE | Required. | Not required. |

GENERAL NONDISCRIMINATION POLICY NOTIFICATION STATEMENT

It is the policy of the (name of LEA) School System not to discriminate on the basis of race, color, religion, sex, national origin, age, or disability in its educational programs or employment policies as required by Titles VI and VII of the Civil Rights Act of 1964, the Equal Pay Act of 1973, Title IX (1972 Educational Amendments), Section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. Inquiries regarding compliance with Title IX, Section 504 or the Americans with Disabilities Act should be directed to (person, address and position) or to the Office for Civil Rights, U.S. Department of Education, Washington, D.C.

ANNUAL NOTICE TO PARENTS

In compliance with state and federal law, the (name of LEA) school district will provide to each protected student with a disability without discrimination or cost to the student or family, those related aids, services or accommodations which are needed to provide equal opportunity to participate in and obtain the benefits of the school program and extracurricular activities to the maximum extent appropriate to the student's abilities. In order to qualify as a protected student with a disability, the child must be of school age with a physical or mental disability, which substantially limits or prohibits participation in or access to an aspect of the school program. These services and protections for "protected students who are disabled" are distinct from those applicable to all eligible or exceptional students enrolled (or seeking enrollment) in special education programs. For further information on the evaluation procedures and provision of services to protected disabled students, contact (person, address and position).

NOTICE OF PARENT AND STUDENT RIGHTS
SECTION 504, THE REHABILITATION ACT OF 1973

The Rehabilitation Act of 1973, commonly referred to as Section 504, is a federal nondiscrimination statute. The purpose of the Act is to prohibit discrimination and to assure that disabled students have educational opportunities and benefits equal to those provided to nondisabled students.

An eligible student under Section 504 is a student who (a) has, (b) has a record of having, or (c) is regarded as having, a physical or mental impairment which substantially limits a major life activity such as learning, self-care, walking, seeing, hearing, speaking, breathing, working and performing manual tasks.

The purpose of this Notice is to delineate the rights assured by Section 504. The enabling regulations for Section 504 at 34 CFR Part 104, entitle students to the following rights:

1. Your child has the right to an appropriate education designed to meet his/her individual educational needs as adequately as the needs of nondisabled students are met. 34 CFR 104.33.
2. Your child has the right to free educational services except for those fees that are imposed on nondisabled students or their parents. Insurers and similar third parties are not relieved from an otherwise valid obligation to provide or pay for services provided to a disabled student. 34 CFR 104.33.
3. Your child has a right to placement in the least restrictive environment. 34 CFR 104.34.
4. Your child has a right to facilities, services, and activities that are comparable to those provided for nondisabled students. 34 CFR 104.34.
5. Your child has a right to an evaluation prior to an initial Section 504 placement and any subsequent change in placement. 34 CFR 104.35.
6. Testing and other evaluation procedures must conform with the requirement of 34 CFR 104.35 as to validation, administration, areas of evaluation, etc. The district shall consider information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social and cultural background, adaptive behavior, physical or medical reports, student grades, progress reports, parent observations, anecdotal reports, and assessment scores. 34 CFR 104.35.
7. Placement decisions must be made by a group of persons (i.e., Section 504 Committee), including persons knowledgeable about your child, the meaning of the evaluation data, the placement options, and the legal requirements for least restrictive environment and comparable facilities. 34 CFR 104.35.
8. If eligible under Section 504, your child has a right to periodic reevaluations, generally every three years. 34 CFR 104.35.

9. You have the right to notice prior to any action by the district in regard to the identification, evaluation, or placement of your child. 34 CFR 104.36.
10. You have the right to examine relevant records. 34 CFR 104.36.
11. You have the right to an impartial hearing with respect to the district's actions regarding your child's identification, evaluation, or educational placement, with opportunity for parental participation in the hearing and representation by an attorney. 34 CFR 104.36.
12. If you wish to challenge the actions of the district's Section 504 Committee in regard to your child's identification, evaluation, or educational placement, you should file a written request for a due process hearing with the district's Section 504 Coordinator.
13. If you disagree with the decision of the impartial hearing officer, you have a right to a review of that decision by a court of competent jurisdiction. 34 CFR 104.36.
14. You also have a right to file a complaint with the Office of Civil Rights. The address of the Regional Office, which covers Tennessee, is:

Office for Civil Rights
61 Forsythe Street, SW, Suite 19T70
Atlanta, GA 30303
(404-562-6350)

My signature indicates that I have received this Notice of Rights.

Signature

Date